



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
OREGON OPERATIONS OFFICE
805 SW Broadway, Suite 500
Portland, Oregon 97205

August 24, 2010

Mr. Bob Wyatt
Northwest Natural & Chairman, Lower Willamette Group
220 Northwest Second Avenue
Portland, OR 97209

Re: Portland Harbor Superfund Site; Administrative Order on Consent for Remedial
Investigation and Feasibility Study; Docket No. CERCLA-10-2001-0240
Feasibility Study Evaluation of Mitigation Costs

Dear Mr. Wyatt:

We are writing to respond to the Lower Willamette Group (LWG) proposal regarding the evaluation of compensatory mitigation for lost or altered habitat resulting from the cleanup action alternatives in the draft Portland Harbor feasibility study (FS). This proposal was presented during our August 11, 2010 Management Team meeting. Quantification of mitigation costs is necessary to ensure that the total cost of each alternative is accurately estimated consistent with a +50/-30% design standard. Likewise, preliminary analysis of habitat impacts, particularly impacts on designated critical habitat for threatened or endangered species, from the cleanup is necessary in order to comply with the Clean Water Act (CWA) and the Endangered Species Act (ESA).

As you are aware, the LWG engaged in mitigation discussions with the National Marine Fisheries Service (NMFS) at EPA's request because the remedy at Portland Harbor will need to meet the substantive requirements of Section 404 of the CWA as well as the ESA. Through those discussions, NMFS provided the LWG with habitat definitions and a matrix of habitat equivalency analysis (HEA) values for different habitat types that may result from the various cleanup alternatives. The habitat types and HEA values were developed based on their relative importance to Juvenile Chinook. During the Management Team meeting, the LWG proposed that the FS will evaluate mitigation using a range of habitat values in addition to the NMFS proposed values resulting in a range of potential mitigation costs.

EPA will allow the LWG to proceed with the proposal to use a range of HEA values to estimate the relative quantity and cost of mitigation that may be required by the different alternatives in the FS. However, EPA expects the FS to clearly identify mitigation based on the NMFS habitat values, and also provide sufficient information and explanation to support any other mitigation values used along with the analysis of potential impacts. This is necessary to allow EPA to review the habitat loss analysis and mitigation cost estimates and for NMFS to

consult on the remedy selected in the Portland Harbor Record of Decision (ROD). Please note that NMFS is not endorsing the use of HEA ranges. Thus, EPA cautions the LWG against over estimating the alternative values.

We understand the LWG seeks the opportunity to develop more information about possible bio-engineering techniques and their veracity in the lower Willamette River in the FS. Nonetheless, given EPA is unaware of any long-term examples of success of such techniques in the Willamette River, the LWG's analysis needs to weigh the risks of failure accordingly in its overall assessment of necessary compensatory mitigation for the Portland Harbor cleanup. For example, the risk factor may be built into the habitat equivalency values and/or specific contingent mitigation actions proposed.

EPA also expects the LWG to consider in its analysis the information that has been generated by the expert panel convened by the Portland Harbor Natural Resource Trustee Council. In particular, the expert panel identified specific habitat needs both within, upstream and downstream of Portland Harbor and initial HEA values for existing and potentially restorable types based on their relative importance to juvenile Chinook. We also expect the LWG to use existing information to cost out potential mitigation projects that create or enhance such needed habitat types both within the site and upstream and downstream of the site since it is unlikely that impacts from many of the active remedial actions can be fully compensated for by on-site (at the facility or SMA level) mitigation activities alone. Although the final mitigation evaluation will be accomplished at the remedial design/remedial action stage of the cleanup, it is possible now to evaluate the significant habitat impacts and opportunities that likely will occur so that the major foundations for a mitigation plan can be developed and the associated costs estimated.

If you have any questions regarding this matter, please contact Chip Humphrey at (503) 326-2678 or Eric Blischke (503) 326-4006. All legal inquiries should be directed to Lori Cora at (206) 553-1115.

Sincerely,

Chip Humphrey
Eric Blischke
Remedial Project Managers

cc: Greg Ulirsch, ATSDR
Rob Neely, NOAA
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